

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2454 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KHADI UTAPATTI KENDRA

Versus

REGIONAL PROVIDENT FUND COMMISSIONER

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Appearance:

MR SK JHAVERI for Petitioner

None present for Respondents No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/10/97

ORAL JUDGEMENT

1. The petitioner challenges by this special civil application the order annexure 'A' dated 6-3-1987 of the Regional Provident Fund Commissioner, Ahmedabad, passed under section 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act, 1952') under which it has been held that the petitioner has been engaged in manufacturing of textiles. Further challenge has been made by the

petitioner to the order of the Central Government dated 1-12-1988 passed under section 19-A of the Act, 1952.

2. This writ petition has been admitted by this Court on 5-4-1989 and interim relief in terms of para-17(C) has been granted.

3. The Act, 1952 has been amended and sections 7-D and 7-I have been inserted to it. Section 7-D of the Act, 1952 provides that the Central Government may, by notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the Employees' Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by this Act and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal.

4. Yesterday in the identical matters, Shri J.D. Ajmera, who appeared for the Regional Provident Fund Commissioner, Ahmedabad made a statement before this Court that the Central Government has constituted the Employees' Provident Funds Appellate Tribunal, and as such, the writ petition against the orders under section 7-A of the Act, 1952 are not maintainable.

5. Section 7-I of the Act, 1952 provides that any person aggrieved by an order passed by the Central Government or any authority under sub-section (1) of Section 7-A may prefer an appeal to the Tribunal against such an order. So the right of statutory appeal is available to the petitioner against the order annexure 'A' dated 6-3-1987. This order has been passed under sub-section (1) of section 7-A of the Act, 1952. When this petition had been filed by the petitioner, the petitioner was not having any statutory remedy of appeal available against the impugned order annexure 'A' dated 6-3-1987 but after the constitution of the Appellate Tribunal under section 7-D of the Act, 1952, the petitioner has to avail of that remedy by filing an appeal before the Appellate Tribunal. Normally this Court would not interfere and direct the parties to first have the recourse of alternate remedy against the impugned order more so when the statutory remedy of appeal is available. It is settled law that where an adequate remedy is there in the statute, the plea to resort to writ remedy under Article 226 or 227 of the Constitution must be discouraged. Reference in this respect may have to the decision of the Apex Court in the case of Shyam Kishore vs. Municipal Commissioner of Delhi reported in AIR 1992 SC 2279. In the present case,

the petitioner has been protected by this Court by grant of interim relief and that continues till date. The petitioner may file an appeal before the Appellate Tribunal and for that it may need reasonable time and in case during this period, the interim order granted by this Court in favour of the petitioner is not continued, it may cause some difficulty to the petitioner. Though the Appellate Tribunal has to consider the matter of grant of interim relief or continuation of interim relief granted by this Court but till that stage is reached, the interim relief granted by this Court in favour of the petitioner has to be continued in the interest of justice.

6. In this case, the counsel for the petitioner has made a statement that after availing of the remedies under the Act, 1952, this special civil application has been filed. It is true that the petitioner has approached to the Central Government under section 19-A of the Act, 1952 against the impugned order annexure 'A' dated 6-3-1987 but section 19-A is not the provision analogous to the provision of Appeal i.e. section 7-I of the Act, 1952.

7. Section 19-A lays down that if any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to -

- (i) whether an establishment which is a factory, is engaged in any industry specified in Schedule I;
- (ii) whether any particular establishment is an establishment falling within the class of establishments of which this Act applies by virtue of a notification under clause (b) or sub-section (3) of section 1 or
- (iii) the number of persons employed in an establishment; or
- (iv) the number of years which have elapsed from the date on which an establishment has been set up or
- (v) whether the total quantum of benefit to which an employee is entitled has been reduced by the employer,

the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty,

and the order of the Central Government, in such cases, shall be final.

8. From mere reading of the provisions of the Act, 1952, and particularly section 7-I, I do not find anything therein where it can be read that the petitioner is deprived of his right of statutory appeal under the said provision merely because it has approached to the Central Government under section 19-A of the Act, 1952. The Appellate Tribunal has to exercise its appellate powers in appeal and those powers of Appellate Tribunal cannot be equated with the provisions under section 19-A of the Act, 1952 nor it can be inferred or presumed or accepted that there are two paralalled remedies against the order provided under section 7(1) and where the party has availed of either of the said remedies its statutory right of appeal as conferred under section 7-I of the Act, 1952 ceases. However, it is made clear that while dealing with the appeal the Appellate Tribunal shall not be influenced by the order of the Central Government made in this case under section 19-A of the Act, 1952.

9. In the result, this special civil application is dismissed only on the ground that the petitioner has an alternate remedy of appeal under the Act, 1952 against the impugned order passed under section 7(1). However, in case the petitioner files an appeal to the Appellate Tribunal within a period of one month from today, the same may not be dismissed on the ground of limitation and it has to decide the same on merits only. The interim relief granted by this Court is extended for six weeks. However, it shall be open to the Tribunal to consider the question regarding extension of the interim relief in favour of the petitioner during the pendency of appeal. While considering this question it may not be influenced by the fact that this Court has granted the interim relief to the petitioner and it has to decide the matter in accordance with law. Rule discharged subject to the aforesaid directions. No order as to costs.

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